



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0824]

RIN 1625-AA09

Drawbridge Operation Regulation; Milwaukee, Menomonee, and Kinnickinnic Rivers and Burnham Canals, Milwaukee, WI

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedules of the bridges over the Milwaukee, Menomonee, and Kinnickinnic Rivers and Burnham Canals. The City of Milwaukee requested the regulations to be reviewed and updated to allow for a more balanced flow of maritime and land based transportation.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2019-0824 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
NPRM	Notice of proposed rulemaking (Advance, Supplemental)
OMB	Office of Management and Budget
PVA	Passenger Vessel Association
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On November 26, 2019, we published in the Federal Register (84 FR 65045) an advanced notice of proposed rulemaking request for comments and on March 9, 2020, we published in the Federal Register (85 FR 13517) notice of temporary deviation from regulations; request for comments that allowed the city to test the new schedule and allow residents to comment all summer. The comments we received from these document led us to publish in the Federal Register (86 FR 20344, April 19, 2021) a notice of proposed rulemaking. Several comments were directed at the operation of the Canadian Pacific Railroad Bridge, mile 1.05, over the Menomonee River. Most of the comments were complaints filed on Coast Guard Delay reports that claims the Canadian Pacific Railroad Bridge, mile 1.05, over the Menomonee River, did, on August 6, 2020, on or about noon that day fail to respond to signals for opening and fail to open the bridge within the 2-hour requirement. The tender stated the request for advance notice for bridge opening was not passed on by the previous drawtender and that priority was given to working on a train and not tending to the bridge. This resulted in three large vessels stuck between bridges waiting for the railroad bridge to open for two hours and forty-five minutes past the arrival time provided by the vessels. We received a separate report that the bridge was out of service for four days, no report was given to the U.S. Coast Guard Command Center and at least one vessel was delayed for four days. We received another report that the bridge was unable to open on October 6, 2020, because the bridge supervisor directed the drawtender to a different location for the day and no other operators were available

until the following day. We received a separate report on the same day of October 6, 2020, from a second vessel that was told railroad had been attempting to call in another drawtender from 4:30 a.m. to 8:19 a.m. without success and the bridge would not open for maritime traffic. On or about June 13, 2020, three sailing vessels were observed waiting at the Canadian Pacific Railroad Bridge at 3:23 p.m. and were not provided an opening until after 5:30 p.m.

The second report was a comment submitted to the regulations.gov portal that requested the schedules to return to the original schedules citing vessels were using excessive speed to go through the river to make the new schedule. The speed limits in the harbor needs to be addressed by the agency responsible for posting the speed limits in the harbor and the author did not consider the needs of all modes of transportation involved with the decision.

On March 30, 2021, we received a report from a public vessel that the drawtender did inform the vessel that requested an opening that a new law required the bridge to remain closed if ice was present.

Separately we discussed with residents who comments on the two hour advance notice required by some bridges, a carryover of the original 1984 regulation that mariners didn't notice before or that was not enforced locally.

Milwaukee Harbor is host to several different vessels and having a large recreational or commercial vessel station keeping between two bridges could be a danger to other vessels traveling between the bridges. The exemption prevents vessels from using excessive speed to clear the bridges before the special bridge hours go into effect and prevents vessels from endangering others waiting for the bridges to open.

After careful review of the comments received against the 50 ton proposed rule we decided that vessels with a documented capacity of 12 tons or greater could cause significant danger to life and property if trapped between two bridges and caused to

station keep, especially with other vessels nearby.

We explained this is not an exclusion for documented vessels 12 tons and larger. This provision is allowing vessels of this size to complete their passage in or out of the Milwaukee Harbor. A vessel at dock or not yet in the river, would be required to wait.

Our office did engage with residents verbally over the phone on several occasions to answer questions and encouraged them to leave comments on the [regulations.gov](https://www.regulations.gov) website. Most of these engagements were with citizens that did not fully read the previous documents concerning the regulation change.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Milwaukee River is approximately 104 miles long. Beginning in Fond du Lac County the river flows easterly to a low head dam just above the Humboldt Avenue Bridge at mile 3.22 in downtown Milwaukee, WI. From here the river flows south to Lake Michigan. This southerly course of the Milwaukee River divides the lakefront area from the rest of the city. The Menomonee River joins the Milwaukee River at Mile 1.01 with the Kinnickinnic River joining the Milwaukee River at Mile 0.39. 21 bridges cross the Milwaukee River from mile 0.19 to mile 3.22. In the early 20th Century, the Milwaukee River was heavily used to support the industries in and around the Great Lakes. Today, the river has been redeveloped as a tourist and recreational destination. From its confluence with the Milwaukee River the Menomonee River flows west for 33 miles. The lower three miles of the Menomonee River is passable by vessels over 600 feet in length. Seven bridges cross the navigable portion of the Menomonee River.

The South Menomonee Canal and the Burnham Canal were both excavated during a waterways improvement project in 1864. Both man-made canals are tributaries of the Menomonee River branching just above its mouth. The South Menomonee Canal is crossed by two bridges and the Burnham Canal is crossed by three bridges.

The Kinnickinnic River flows north through the southern portion of the City of Milwaukee connecting with the Milwaukee River near Lake Michigan. Only the lower 2.30 miles of the river have been improved for vessel use. Five bridges cross the river with the Lincoln Avenue Bridge at the head of navigation. Freighters up to 1,000 feet in length transfer cargoes at the confluence of the Kinnickinnic and Milwaukee Rivers. Most of the recreational vessels in Milwaukee moor in the lake front marinas and only transit the rivers. Boat yards on the Menomonee and Kinnickinnic rivers haul out and store most of the recreational vessels in the fall and winter months and launch the vessels in the spring. This action contributes to a considerable surge in drawbridge openings in the fall and spring.

The following bridges will be included in the rule: The Union Pacific Railroad Bridge, mile 0.59, over the Milwaukee River with a vertical clearance in the closed position of 7 feet above International Great Lakes Datum of 1985 (IGLD85). The Broadway Street Bridge, mile 0.79, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Water Street Bridge, mile 0.94, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The St. Paul Avenue Bridge, mile 1.21, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Clybourn Street Bridge, mile 1.28, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. Michigan Street Bridge, mile 1.37, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Wisconsin Avenue Bridge, mile 1.46, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Wells Street Bridge, mile 1.61, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Kilbourn Avenue Bridge, mile 1.70, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above

IGLD85. The State Street Bridge, mile 1.79, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Highland Avenue Pedestrian Bridge, mile 1.97, over the Milwaukee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Juneau Avenue Bridge, mile 2.06, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Knapp Street/Park Freeway Bridge, mile 2.14, over the Milwaukee River with a vertical clearance in the closed position of 16 feet above IGLD85. The Cherry Street Bridge, mile 2.29, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Pleasant Street Bridge, mile 2.58, over the Milwaukee River with a vertical clearance in the closed position of 14 feet above IGLD85. The Canadian Pacific Railroad Bridge, mile 1.05, over the Menomonee River with a vertical clearance in the closed position of 8 feet above IGLD85. The North Plankinton Avenue Bridge, mile 1.08, over the Menomonee River with a vertical clearance in the closed position of 14 feet above IGLD85. The North Sixth Street Bridge, mile 1.37, over the Menomonee River with a vertical clearance in the closed position of 23 feet above IGLD85. The Ember Lane Bridge, mile 1.95, over the Menomonee River with a vertical clearance in the closed position of 12 feet above IGLD85. The Sixteenth Street Bridge, mile 2.14, over the Menomonee River with a vertical clearance in the closed position of 35 feet above IGLD85. The South Sixth Street Bridge, mile 1.51, over the South Menomonee Canal with a vertical clearance in the closed position of 8 feet above IGLD85. The Union Pacific Railroad Bridge, mile 1.19, over the Kinnickinnic River with a vertical clearance in the closed position of 8 feet above IGLD85. The Kinnickinnic Avenue Bridge, mile 1.67, over the Kinnickinnic River with a vertical clearance in the closed position of 8 feet above IGLD85. The Canadian Pacific Railroad Bridge, mile 1.67, over the Kinnickinnic River with a vertical clearance in the closed position of 15 feet above IGLD85. Finally, the South First Street Bridge, mile 1.78, over

the Kinnickinnic River with a vertical clearance in the closed position of 14 feet above IGLD85. These bridges currently operate under title 33 of the Code of Federal Regulations (33 CFR), § 117.1093.

IV. Discussion of Comments, Changes and the Final Rule

There is a typographical error in the NPRM describing the operation of the Sixth Street Bridge as remaining closed by regulation and that should have read as the Sixteenth Street Bridge. A typographical error referring to the Canadian Pacific Railroad Bridge as the Canadian National Railroad Bridge have been corrected in this copy. All other comments have been addressed previously.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their

fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard did not receive any comments from the Small Business Administration on this rule. The PVA claimed that this rule would have a significant impact on one or more of its members. We assisted the PVA and its members to submit documentation to the Local Milwaukee office of the Small Business Administration and made ourselves available for any questions they may have. They did not have any concerns and they did not have any questions for us. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V. A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

We did not receive any comments from local Indian tribes during any comment periods for this rule.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. We did not receive any comments.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.1093 to read as follows:

§ 117.1093 Milwaukee, Menomonee, and Kinnickinnic Rivers and South Menomonee and Burnham Canals.

(a) The draws of the bridges over the Milwaukee River shall operate as follows:

(1) The draws of the North Broadway Street bridge, mile 0.5, and North Water Street bridge, mile 0.6, and Michigan Street bridge, mile 1.1, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Saturday except Federal holidays the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Milwaukee River shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section: St. Paul Avenue, mile 1.21, Clybourn Street, mile 1.28, Wells Street, mile 1.61, Kilbourn Street, mile 1.70, State Street, mile 1.79, Highland Avenue, mile 1.97, and Knapp Street, mile 2.14.

(4) No vessel documented 12 tons or greater shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Milwaukee River will open on signal if a 12-hour advance notice is provided.

(b) The draws of bridges across the Menomonee River and South Menomonee Canal operate as follows:

(1) The draw of the North Plankinton Avenue bridge across the Menomonee River, mile 1.08, and the Canadian Pacific Railroad bridge, mile 1.05, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Friday except Federal holidays the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Menomonee River and South Menomonee Canal shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section: North Plankinton Avenue, mile 1.08, North Sixth Street, mile 1.37, and North Ember Lane, mile 1.95, all over the Menomonee River and South Sixth Street, mile 1.51, over the South Menomonee Canal.

(4) No vessel documented over 12 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Menomonee River and South Menomonee Canal will open on signal if a 12-hour advance notice is provided.

(c) The draws of bridges across the Kinnickinnic River operate as follows:

(1) The draw of the Kinnickinnic Avenue bridge, mile 1.5, shall open on signal; except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except

Federal holidays, the draws need not be opened, and from midnight to 7 a.m. Monday through Friday, except Federal holidays, the bridges will open on signal if a 2-hour advance notice is provided.

(2) The draws of all other bridges across the Kinnickinnic River shall open on signal if at least 2-hours' notice is given except that, from April 16th through November 1st, from 7:30 a.m. to 8:30 a.m. and from 4 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draws need not be opened.

(3) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section: The South First Street Bridge, mile 1.78.

(4) No vessel documented over 12 tons shall be held between any bridge at any time and must be passed as soon as possible.

(5) From November 2nd through April 15th, all drawbridges over the Kinnickinnic River will open on signal if a 12-hour advance notice is provided.

(d) The Canadian Pacific Railroad Bridge at Mile 1.74 over the Burnham Canal, and the Sixteenth Street Bridge, mile 2.14, over the Menomonee River are closed by regulation and do not need to open for the passage of vessels.

M. J. Johnston,
Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.